IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

First Appeal From Order No. 126 of 2001
(Old No. 41 of 1996)

The New India Assurance Company Ltd.
Bye Pass Road, Pilibhit
Through its Branch Manager ... Appellant

Vs

1. Hardwari Lal S/o Khalasi Ram
   R/o Pilibhit, Khatima
   Nainital
2. Sri R.K. Agarwal
   S/o Sri Gyan Chandra Agarwal
   R/o Mohalla Puranganj
   Pilibhit ... Respondents

Sri T.A. Khan and Sri R.B. Agarwal, learned counsel for the appellant
Sri D.S. Patni, learned counsel for the respondents

Hon'ble B.C. Kandpal, J.

This appeal has been filed by the New India Assurance Company Ltd. against the judgment and award dated 29.11.1995 passed by IInd Additional District Judge/M.A.C.T., Nainital in M.A.C.P. No. 520 of 1992 Hardwari Lal Vs R.K. Agarwal.

2. Brief facts of the case are that on 22.07.1991 at about 09:45 p.m., Hardwari Lal was going to his house and when he reached near Sharda Takiz on Pilibhit Road, one bus bearing registration No. UPE 6336 which was being driven by its driver in a very rash and negligent manner hit Hardwari Lal due to which he sustained injuries. The injured – Hardwari Lal filed a claim petition before the Tribunal concerned for Rs. 3,00,000/- as disability, Rs. 6,000/- as medical expenses and Rs. 6,94,000/- other damages which comes to Rs.10,00,000/- in total as compensation.

3. Opposite parties/appellant contested the claim petition filed by the claimant and submitted their written statement. Sri R.K. Agarwal has alleged in his written statement that at the time of the accident, the bus was insured with the New India Assurance Company, therefore, it is the liability of Insurance Company to pay compensation. The New India Assurance Company has alleged in its written statement that the accident occurred due to rash and negligence driving of the driver and the claimant has claimed very high compensation. The Insurance Company has further alleged that the Insurance Company is not liable to pay any compensation, as there has been breached of condition of Insurance Policy.

4. On the basis of the pleadings of the parties, the Tribunal concerned has framed following issues:-

1. Whether the accident in question took place on account of rash and negligent driving of the driver of bus bearing registration No. UPE 6336?
2. Whether the claimant is entitled to receive any compensation? If yes, from whom?

5. Thereafter both the parties were adduced their evidence in support of their case. The Tribunal, after assessing the entire evidence on record and after hearing learned counsel for the parties, decreed the claim petition for an amount of Rs. 1,50,000/- along with interest @ 12% per annum as compensation from the date of filing the petition to the claimant/injured vide judgment and award dated 29.11.1995. The Tribunal has further directed that in case, if the amount of compensation is not paid within a period of one

month, thereafter the rate of interest would be 18% instead of 12%.

6. Feeling aggrieved by the aforesaid judgment and award the New India Assurance Company Ltd. filed this appeal before the Allahabad High Court which has been transferred to this Court after creation of new State.

7. Heard Sri T.A. Khan and Sri R.B. Agarwal, learned counsel for the appellant, Sri D.S. Patni, learned counsel for the respondents and perused the record.

8. The sole controversy involved in this case is that the Insurance Company has challenged the impugned judgment and award on the ground of excessive amount of compensation awarded by the Tribunal in favour of the claimant/injured.

9. I do not find any force in the submission advanced by the learned counsel for the appellant, in view of the Hon'ble Apex Court decision reported in ***JT 2002(7) SC 251*** in ***National Insurance Company Ltd., Chandigarh Vs Nicolletta Rohtagi & others,*** the right to appeal to the Insurance Company to challenge the impugned judgment and award is confined only upto the grounds specified under Section 149(2) of the Motor Vehicles Act. The Hon'ble Apex Court has also observed in the aforesaid decision that unless the conditions precedent specified in Section 170 are satisfied, an insurance company ha no right in appeal to challenge the award on merits also. It has further been held in the aforesaid judgment that it is not permissible for an insurer to file an appeal questioning the quantum of compensation.

10. In view of the aforesaid decision of the Hon'ble Apex Court, I do not find any merit in this appeal as far as the quantum of compensation is concerned.

11. The learned counsel for the appellant has invited my attention towards the rate of interest indicated by the Tribunal in the impugned judgment and award. The Tribunal has observed that in case, if the amount of compensation is not paid within a period of one month, the rate of interest would be 18% instead of 12%.

12. To my view the rate of interest indicated by the Tribunal in the impugned judgment and award as 18% appears to be quite excessive. It should be 12% instead of 18%. The impugned judgment and award to the extent of the interest indicated therein as 18% is liable to be modified.

13. For the reasons stated above, the appeal is partly allowed. The rate of interest indicated as 18% in the impugned judgment and award is modified to 12%. Rest of the findings recorded by the Tribunal on other aspects are hereby confirmed.

14. Learned counsel for the appellant has submitted before the Court that the entire awarded amount has been deposited. In case, if the amount has been deposited along with rate of interest @ 18% as has been indicated in the impugned judgment and award, then the appellant is at liberty to withdraw the excessive amount deposited by him.

(B.C. Kandpal, J.)

15.12.2006.
ASWAL